



AMERICAN

# Joint Foreign Chambers of the Philippines

American Chamber of Commerce of the Phils., Inc. | Australian-New Zealand Chamber of Commerce (Phils.), Inc. | Canadian Chamber of Commerce of the Phils., Inc. | European Chamber of Commerce of the Phils., Inc. | Japanese Chamber of Commerce & Industry of the Phils., Inc. | Korean Chamber of Commerce of the Phils., Inc. | Philippine Association of Multinational Companies Regional Headquarters, Inc.

October 14, 2011

## Joint Foreign Chambers' Statement on Competition Legislation

The Joint Foreign Chambers (JFC) are firmly of the opinion that a well-drafted and sensibly implemented competition law would contribute considerably to President Aquino's promise of a level playing field for investors in the Philippines.

In this context, the Joint Foreign Chambers are pleased to note that the Executive Branch of government and both Houses of Congress are determined to create effective competition legislation and implement competition policy.

The House has already a consolidated bill (HB 4835); the Senate is moving towards a consolidated bill.

In the meantime, President Aquino has signed Executive Order 45, creating a Competition Office under the Department of Justice so that competition policy can be better enforced. The JFC see this decision of the Aquino Administration as a move to "hit the ground running", address competition issues immediately, and create the level playing field that consumers deserve.

### *Main objectives of competition law and policy*

The main objective of competition law and policy is to create or maintain the competition process, not to protect specific competitors, with the ultimate goal of boosting the welfare of customers and final consumers. Protecting the competitive process is expected to lead to maximize dynamic efficiencies in economic activity and enhancing consumer welfare.

Competitive rivalry forces firms to minimize their production and distribution costs to avoid losing customers' patronage to the benefit of other firms thereby enhancing their competitiveness. Also, firms are forced to invest in research and development and more generally to innovate in order to maintain the lead vis-à-vis competitors.

Finally, through effective competition, consumers are placed in the position to choose among competing offers, selecting those goods and services which are better able to meet their needs.



AUSTRALIAN-NEW ZEALAND



CANADIAN



EUROPEAN



JAPANESE



KOREA



PAMURI



AMERICAN

The enforcement of competition law and policy also contributes positively to other public policies. It can contribute to policies encourage innovating product and processes. Also, competition law and policy, by promoting an efficient reallocation of resources, may contribute to economic growth and sound employment policy. Enhanced market access by new market players will lead to an increase of overall employment.

### *Scope of application of competition law and policy*

Competition law and policy should apply across the board, to all entities - no matter their legal form - that engage in economic activities, including those not pursuing a profit. It is important to ensure an economy-wide application of competition policy in order to avoid discriminatory approaches in different industries. Both private and state-owned firms should be subject to the same competition law and policy principles.

### *Restrictive agreements*

Competition-restricting agreements are prohibited in all competition legislations. The prohibition habitually covers all forms of agreements, formal and informal, written and oral. To prove the existence of an agreement, it is sufficient to produce evidence that a consensus among participants was reached on the conduct to be followed in the marketplace, with respect to pricing or other important trading actions.

Agreements may be “horizontal” i.e. entered into among firms that are competitors or potential competitors in the same market. For example, an agreement between a firm in a market with a potential new market entrant not to enter the same market would fall in the “horizontal agreement” category.

“Vertical agreements” are those arranged among firms operating at different stages of the same production-distribution chain. For example, exclusive distribution agreements between a supplier and its wholesalers appointed as exclusive distributors for a certain area would be considered a vertical agreement.

Most jurisdictions have singled out a sub-category of horizontal agreements as the most harmful violations of competition law, with no associated market efficiencies or benefits to consumers. They are the so-called “hard-core” cartels, i.e. agreements with the object or effect to fix prices (or other trading conditions, such as discount terms), to curb output, to share markets and to rig tender bids.

Cartel agreements do not require any major economic assessment of their economic effects. They always produce significantly negative effects on competition and final consumers which are forced to purchase goods and services at higher costs or lower quality.



AUSTRALIAN-NEW ZEALAND



CANADIAN



EUROPEAN



JAPANESE



KOREA



PAMURI



AMERICAN

### *Definition of competition policy and competition law*

It is important to fully understand the meaning of competition policy and competition law and their linkages.

By competition policy we mean governmental policies producing a relevant influence on the protection and promotion of market competition.

These policies include the establishment of supervisory rules and principles for industries and sectors promoting market efficiency and competition. They also cover pro-competitive regulatory reform which aims at reducing administrative barriers to market and eliminating competition-restricting practices introduced by legislation.

Trade and foreign direct investment (FDI) liberalization are clearly important components of national competition policy, even though trade and FDI liberalization may not be sufficient to introduce competition in some sectors, including public utilities.

Competition law can be viewed as a sub-set of competition policy. It refers to legislation prohibiting autonomous business practices, such as restrictive agreements, abuses of dominant position and anti-competitive mergers distorting and restricting competition. These restrictive business practices are prohibited because they determine negative effects on consumers' welfare as well as on market efficiency and ultimately on industry's international competitiveness as incentives to operate efficiently are reduced.

### *Implementation of Competition Policy*

Competition law requires the establishment of a competition enforcement agency and courts involved in the application of the legislation.



AUSTRALIAN-NEW ZEALAND



CANADIAN



EUROPEAN



JAPANESE



KOREA



PAMURI